

Chapter 3.16

FINANCING LOCAL IMPROVEMENTS

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3.16.010 Short title. This chapter shall be known as the county local assessment ordinance. (Ord. 93-7-1, 1993)

3.16.020 Purpose. The purpose of this chapter is to provide a method for financing improvements located within or without the county, that serve county property owners. (Ord. 93-7-1, 1993)

3.16.030 Applicability. This chapter may be used, and assessments levied, in unincorporated portions of the county and, upon consent of a city governing body, within the incorporated limits of such city. If improvements are to be made within incorporated areas, the city governing body may prescribe improvement standards. (Ord. 93-7-1, 1993)

3.16.040 Statutory authority.

A. This chapter is enacted under the authority granted by ORS 203.030 to 203.065 and 371.610.

B. This chapter supplements ORS 371.605 to 371.660. Except as superseded by this chapter, ORS 371.605 to 371.660 shall apply to assessment liens for improvements within the scope of section 3.16.030.

C. This chapter supplements the provisions of ORS 223.205, 223.210 to 223.295, 223.297 to 223.314, 223.317 to 223.327, 223.387 to 223.401, 223.405 to 223.485, 223.505 to 223.650, and 311.702 to 311.735.

D. Any provision of this chapter that is inconsistent with any provisions of the

statutes cited in subsections A. and B. of this section shall supersede and take precedence over the statutory provision unless:

1. the statute is clearly intended to preempt local legislation, or
2. the county board otherwise elects to act pursuant to the statute.

(Ord. 93-7-1, 1993; Ord. 2001-6-2 §1, 2001)

3.16.050 Definitions.

A. Definitions in ORS 371.605 and 223.001 shall apply to this chapter. Definitions in this section are intended to expand the scope of improvements that may be financed through assessments ORS 371.605 to 371.660, and no definition in this section shall be deemed to restrict improvements that are authorized by ORS 371.605 to 371.660.

B. As used in this chapter, unless the context requires otherwise:

1. "Benefitted property" means a unit of land within the boundaries of the District which will receive special benefits from the improvement and which may be assessed for special benefits under ORS 371.605 to 371.660 and Douglas County Code Chapter 3.16. (Ord. 2001-6-2 §2, 2001)

2. "County Board" means the board of county commissioners and is synonymous with "county court" and "county governing body" as used in ORS 371.605 to 371.660. (Ord. 2001-6-2 §2, 2001)

3. "Development Project" means any subdivision, land partition, planned unit development, or any other similar land use action which is subject to the Douglas County Land Use and Development Ordinance; and any construction, reconstruction, expansion, or major renovation of an industrial facility or development project within the scope of Chapter 2.16 of the Douglas County Code. (Ord. 2001-6-2 §2, 2001)

4. "Engineer" means the county director of public works, or his designee, or other engineer selected by the county board. (Ord. 2001-6-2 §2, 2001)

5. "District" means a special road district formed and existing in Douglas County pursuant to ORS 371.305 to ORS 371.385. (Ord. 2001-6-2 §2, 2001)

6. "District board" means the board of commissioners of a special road district. (Ord. 2001-6-2 §2, 2001)

7. "Improvement" means a local improvement as defined in ORS 223.001 and 310.140, and includes all work necessary for the construction, reconstruction, expansion, or major renovation of: (Ord. 2001-6-2 §2, 2001)

- a. Roads, streets, curbs, sidewalks and related facilities.
- b. Sewage collection and disposal works.
- c. Storm drainage works.
- d. Water supply works for domestic and industrial water including all facilities necessary for tapping, treating, storing, and delivering water.
- e. Park and recreation facilities.
- f. Any improvements listed in ORS 371.605.

8. "Unit of land" shall have the definition stated in the Douglas County Land Use and Development Ordinance. (Ord. 2001-6-2 §2, 2001)

3.16.060 Condemnation authority. The county is empowered to condemn land and property or any right or interest therein for any improvement. If the county board finds it

necessary to so condemn, the provisions of ORS 281.350 through 281.380 shall apply. (Ord. 2001-6-2 §3, 2001)

3.16.070 Alternative procedure.

A. As an alternative to the procedure under ORS 371.615, 371.630, and 371.635 (1), the board may order an improvement and assessment in accordance with this section.

B. Proceedings for an improvement under this section shall be initiated by a petition signed by 100 percent of the owners of 100% of the land to be assessed for the cost of the improvement. Signatures on the petition shall be subject to ORS 371.620.

C. Petitions under this section shall be subject to the following conditions:

1. The petitioners shall waive any right to have any costs of the improvement assessed against land benefitted by the improvement that is owned by persons other than the petitioners.

2. The petitioners shall acknowledge that the improvement is a "local improvement" as defined by Section 11b(2)(d) of Article XI of the Oregon Constitution, and that assessment of cost of the improvement against petitioners does not constitute a tax under Section 11b, Article XI of the Oregon Constitution.

3. The petition shall provide that upon written approval by the petitioners of the engineer's report pursuant subsection of this section, the county board may enter an order directing the improvement to be made pursuant to ORS 371.635, and the petitioners shall waive any rights to notice and hearing under ORS 371.630.

4. The petitioners shall acknowledge that the improvement is being made for the benefit of petitioners, and that making the improvement is valuable consideration for waiver of any rights by the petitioners under this section.

D. If the improvement is being made to facilitate a development project, the petition shall state:

1. Whether the cost of the improvement is to be apportioned among units of land within the development project, and if so, the portion of the costs that will be assessed against each unit of land;

2. Whether the assessments will be paid in installments, and if so, the interest rate acceptable to the petitioners, the duration of payments, and the frequency of payments;

3. That any discrete assessment against any unit of land in the development project shall be paid upon sale of the land; and

4. That the petitioners waive any rights granted by ORS 371.655, ORS Chapter 223, or Section 11b, Article XI of the Oregon Constitution to pay the assessment by installments on terms contrary to the payment terms stated in the petition.

E. The report of the engineer made pursuant ORS 371.625 shall either endorse the terms stated in the petition pursuant to subsection D of this section or state alternative terms. The engineer shall provide a copy of the report to petitioners. The engineer may revise the report at any time before it is approved by the petitioners.

F. The petitioners must approve the engineer's report in writing before the county board will enter an order to make the improvement. If the petitioners reject the terms stated in the report or fail to approve the report within 30 days after the it is provided to the petitioners, the engineer may withdraw the report and abandon the improvement. The

petitioners approval shall acknowledge that the assessment against the petitioners' land shall be based the actual cost of the improvement pursuant to ORS 371.640 to 371.650, and that the cost of the improvement stated in the engineer's report is an estimate only.

G. If the lowest responsive bid submitted by a responsible bidder for construction of the improvement exceeds the engineer's estimate of the cost of construction of the improvement by more than 10%, the petitioners may elect in writing to abandon the improvement and reimburse the county for any engineering and administration costs incurred prior to receipt of bids. In that event, upon reimbursement of engineering and administration costs, the county board may enter an order abandoning the improvement, and reject all bids for the improvement. For the purposes of comparing the engineer's estimated cost of construction to the lowest bid, the estimated cost of construction shall not include engineering and administration costs. (Ord. 93-7-1, 1993; Ord. 2001-6-2 §4, 2001)

3.16.080 Grant funds. If part of the costs of making the improvement are paid with grant funds, the engineer shall deduct such grant funds from the cost of the improvement to determine the amounts that will be assessed against benefitted properties.

3.16.150 Compilation of improvement cost.

A. Notwithstanding ORS 371.640(1), upon the direction of the county board, the engineer shall compile the total cost of the improvement, even though the county board has not entered an order accepting the improvement if:

1. The improvement is substantially complete and ready for beneficial use;
2. Pending claims, actions, arbitration proceedings or other disputes between the county and a construction contractor prevent final acceptance of the improvement project;
3. The engineer has inspected the improvement and has recommended making the final assessment pursuant to the provisions of this subsection.

B. The cost of the improvement compiled under subsection A of this section shall include all costs covered by ORS 371.640(1) and shall include the estimated cost of any construction claims. ORS 371.640(2) through (5) shall apply to the cost of the improvement compiled under this section. (Ord. 2001-6-2 §5, 2001)

3.16.170 Assessments due on sale. If an improvement is initiated by petition submitted pursuant to section 3.16.070 of this chapter and the improvement is made to facilitate a development project, the order determining assessments under ORS 371.645 may require that the assessment allocated against any unit of land in the development project shall be paid upon sale of the that unit of land. (Ord. 93-7-1, 1993; Ord. 2001-6-2 §6,2001)

3.16.200 Local access roads within districts.

A. The county may cooperate with a district to provide funding for an improvement to a local access road within a district pursuant to an intergovernmental agreement that conforms to this section. If the county and a district enter into an intergovernmental agreement pursuant to this section, the district will be solely responsible for the planning, design, construction, reconstruction, alteration, repair, and maintenance of

the local access road that is the subject of the agreement, and the county will not be a party to any public contract made by the district for such purposes other than the intergovernmental agreement. Neither this section nor an intergovernmental agreement made pursuant to this section will affect the county's jurisdiction over a local access road under ORS Chapter 368.

B. If a district enters into a public improvement contract for the improvement that is subject to an intergovernmental agreement under this section and the district board elects to proceed with the improvement, the district board may submit a written request to the county board to proceed with assessment of benefitted properties within the district in accordance with ORS 371.605 to 371.660 as modified by this chapter. The district board will give a copy of the request to the director of the county's public works department. The request must be submitted within sixty days after the intergovernmental agreement is signed unless the intergovernmental agreement requires an earlier date. The request must include the following information:

1. A description of the improvement;
2. The estimated total cost of the improvement that will be assessed against benefitted properties;
3. The name and address of the owner of each benefitted property;
4. The tax lot and account number and the legal description of each benefitted property;
5. The method of determining assessments recommended by the district board;
6. The recommended assessment for each benefitted property;
7. An estimated schedule for disbursement of funds by the county to make payments for the improvement;
8. Any other information required by the intergovernmental agreement or specifically requested by the county; and
9. Certification that the District has complied with all applicable laws in contracting for the improvement.

C. Concurrently with the request to proceed with assessments, the district board shall prepare and submit to the director of the county's public works department a written notice addressed to the owner of each benefitted property which states:

1. That the district board intends to proceed with the improvement;
2. The tax lot and account number and the legal description of the owner's benefitted property;
3. The estimated total cost of the improvement and the estimated amount of the assessment against the owner's benefitted property;
4. That the owner must file any objection to further prosecution of the improvement in writing with the county board within fourteen days after the mailing of the notice, and that the owner will be deemed to waive any objection to prosecution of the improvement if the owner fails to file a timely written objection, and
5. That the county board has characterized the assessment as a local improvement assessment and that any appeal of the county board's decision is subject to the requirements of ORS 305.583.

D. The county board will not be obligated to accept the district board's

apportionment of the cost of the improvement among benefitted properties. Within fourteen days after the county board receives the documents described in subsections B and C of this section, the county board will:

1. Determine the estimated amount of each assessment; and
2. Direct the director of the county's public works department to give notice to each owner of benefitted property which contains the information provided by the district pursuant to Subsection C of this section except that the amount of the assessment stated in the notice will be determined by the county board.

E. Notwithstanding ORS 371.630, objections to the improvement must be received by the county board within fourteen days after notice is mailed pursuant to Subsection D of this section. If the county board receives objections to the improvement signed by more than 50 percent of the owners of benefitted properties representing more than 50 percent of the total amount of the assessments for the improvement within fourteen days after notices are mailed, the county board will enter an order stating that the assessment will not be made and the district will not be eligible to submit a new request to an assessment to fund the improvement within one year of the date the order.

F. If the number of objections stated in subsection E of this section is not received within the time allowed, the county board will enter an order describing the benefitted properties to be assessed. The recorded order is notice that the benefitted properties described in the order will be subject to a lien of an assessment for the cost of the improvement, in an amount to be determined later in accordance with ORS 371.605 to 371.660 and this chapter.

G. Unless the district board and the county board agree otherwise in writing, within fourteen days after an order is entered by the county board pursuant to subsection F of this section, the district board will proceed with the improvement. The county will provide funds to the district to cover the cost of the improvement. The total amount provided by the county will not exceed the total estimated assessments for which notice to owners is given under subsection D unless:

1. The district board provides adequate assurance to the county board that the district can repay the amount by which disbursements from the county exceed the total estimated assessments; or
2. The district board and the county board agree that the final assessments will be increased to cover disbursements by the county that are not repaid by the District under subsection G.1.

H. Within fourteen days after completion of the improvement or within fourteen days following substantial completion under the conditions stated in subsection I of this section, the district board will give notice to the county board which will include the following information:

1. The district board's recommendation on the final amounts of the assessments;
2. A statement of any changes in the information provided pursuant to subsection C of this section; and
3. Any other information necessary for giving notice to property owners under Subsection J of this section.

I. If the improvement is substantially complete and ready for beneficial use, but

pending claims, actions, arbitration proceedings or other disputes between the district and a construction contractor prevent final acceptance of the improvement, the amount of the assessments recommended by the district may be based on the estimated final cost of improvement as determined by the district board.

J. Within fourteen days after receipt of the notice from the district board pursuant to subsection I, the county board will hold a hearing to determine final assessments. Not less than five days prior to the date of the hearing, the county board shall mail a written notice to the owner of each benefitted property stating the time and place of the hearing and the amount of the proposed assessment against the benefitted property. Following the hearing, the county board shall enter an order determining the amount of assessment against each benefitted property. The total amount of the final assessments cannot exceed the total cost of making the improvement, including the estimated cost of resolving any construction claims that are pending at the time the district provides notice under subsection H.

K. The final assessments will be subject to the provisions of ORS 371.650, 371.660, and 371.665.

L. If an owner of benefitted property elects to pay an assessment in semiannual installments pursuant to ORS 371.655 and ORS 223.210 the assessment will be amortized over a period stated in the intergovernmental agreement between the district board and the county board. The interest rate for payment by installments will be determined by the county accountant by calculating an average rate based on the lowest and the highest rates charged by banks in Oregon for fifteen year and thirty year loans as published in a newspaper of general circulation in the State of Oregon. The method of calculation and the date of publication of the interest rates that are used to calculate the average rate will be determined by the county accountant.

M. The intergovernmental agreement between the county and the district will provide that if the county is required to take action to collect a delinquent assessment by foreclosure or otherwise under this chapter or ORS 371.660, the district will reimburse the county for any uncollected portion of any delinquent assessment, including interest charged by the county pursuant to subsection M of this section, and the costs of collection, attorney fees and administrative expenses, that are not covered by the proceeds actually received by the county from sale of the benefitted property or otherwise.

N. An improvement made pursuant to this section will be the property of the district. Prior to disbursement of any funds by the county pursuant to this section, the county will convey the county's title and interest in the local access roads that are to be improved to the district by bargain and sale deed and the district will accept and record the deed. (Ord. 2001-6-2 §7, 2001)

3.16.260 Apportionment of assessment. ORS 223.317, 223.322, and 223.327 regarding apportionment of assessments shall apply to assessments made pursuant to ORS 371.605 to 371.660 and this chapter, except improvements initiated by petition pursuant to section 3.16.070. (Ord. 93-7-1, 1993)

3.16.265 Release of lien. If an assessment lien is not financed by Bancroft Bond, all or part of any parcel subject to the assessment lien may be released from the lien at

upon such terms as the county board, in its sole discretion, may deem equitable and appropriate. (Ord. 93-7-1, 1993; Ord. 2001-6-2 §8, 2001)

3.16.290 Delinquent assessments--Execution and sale.

A. One year from the date an assessment for improvements under this article is delinquent, or, in case the assessment has been spread in installments, one year from the date any installment is delinquent, the county board shall prepare a delinquent list of all assessments not wholly paid. The list shall contain a description of the land, the name of the person to whom assessed and the amount of the assessment and interest due.

The county board shall transmit the list to either the county counsel or the county clerk.

B. If the list prepared under subsection A is transmitted to the county clerk, the clerk shall issue a writ of execution thereon, directed to the county board. The county board shall then proceed under this subsection to collect the unpaid assessments named in the list by advertising and selling each lot or parcel of land in the manner provided by law for the sale of real property on execution, but no lot or parcel shall be sold for a sum less than the amount of the unpaid assessment plus interest thereon and the cost of advertising and sale.

C. If the list prepared under subsection A is transmitted to the county counsel, the delinquent assessment lien may be foreclosed by civil action in the Circuit Court of the State of Oregon for Douglas County. The county counsel shall proceed with judicial foreclosure of each assessment lien on the list, unless the county counsel certifies to the county board that the costs of foreclosure exceed the amount the county could collect through foreclosure.

1. Actions to foreclose liens under this subsection shall be governed by ORS 88.010 to 88.100 to the extent those statutes are consistent with this chapter. ORS 88.030 shall not be construed to negate or subordinate the priority of an assessment lien that is established by Section 3.16.240.

2. In any action authorized by this section, the county may include any number of lots or parcels upon which it has delinquent liens. Any number of different delinquent liens may be foreclosed upon a lot or parcel in one action. If there is more than one delinquent lien on any lot or parcel, the various amounts thereof, including accrued interest, shall be added together and the total thereof shall be deemed the amount of lien for which the lot or parcel is to be sold.

3. The county may bid at the sale on execution of the property involved in the foreclosure action. The bid shall be the sum awarded to the county in the foreclosure decree.

4. Notwithstanding ORS 88.090, the foreclosure decree shall require sale of the property for satisfaction of the entire assessment, not merely delinquent installments. (Ord. 93-7-1, 1993; Ord. 2001-6-2 §9, 2001)